

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DELPHINE GREEN,

Petitioner,

v.

CIVIL ACTION NO. 1:07CV55
CRIMINAL ACTION NO. 1:05CR102
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On April 19, 2007, the pro se petitioner, Delphine Green ("Green"), filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2255. On July 9, 2007, Green filed an amended petition. On July 12, 2007, United States Magistrate Judge John S. Kaull entered a Report and Recommendation ("R&R"), recommending that the Court deny Green's § 2255 motion and dismiss the case with prejudice. Green did not file any objections. Consequently, on October 23, 2007, the Court adopted the R&R in its entirety, denied Green's § 2255 motion, denied her amended motion and dismissed the case with prejudice.

Subsequently, on November 30, 2007, Green filed a motion to reopen the case, asserting that she had never received the R&R. Because the docket sheet did not reflect a dated return receipt, the Court granted Green's motion and reopened the case. On January 16, 2008, Green finally filed objections to the R&R.

ORDER ADOPTING REPORT AND RECOMMENDATION

This Court reviews objections to an R&R de novo, but may adopt portions of the R&R to which Green has not objected without substantive review.¹ In her objections, Green merely reasserts the original three grounds for her motion without specific argument as to how the Magistrate Judge allegedly erred. Specifically, she alleges that her plea agreement did not contain all of the promises made to her by the government, her attorney rendered ineffective assistance of counsel, and her conviction was somehow illegal through an unlawful arrest.

Upon de novo review, the Court finds that the Magistrate Judge properly applied the applicable legal standards in recommending that this Court deny and dismiss Green's petition on all grounds. The Magistrate Judge properly found that the plea agreement did not contain any promise of a one-year sentence and that Green had indicated on the record at her Rule 11 hearing that there were no other agreements between the parties. Applying Strickland v. Washington, 466 U.S. 668 (1984), the Magistrate Judge also correctly determined that Green's ineffective assistance of counsel argument was without merit. Finally, the Magistrate Judge correctly

¹ Green's failure to object any portion of the Report and Recommendation not only waives her appellate rights on that issue, but also relieves the Court of any obligation to conduct a de novo review of that issue. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).

ORDER ADOPTING REPORT AND RECOMMENDATION

applied 28 U.S.C. 2255 and found that Green had failed to allege sufficient grounds to support her unlawful arrest argument.

Consequently, the Court **ADOPTS** Magistrate Judge Kaull's Report and Recommendation in its entirety, **DENIES** Green's § 2255 motion (dkt. no. 96 in 1:05cr102 and dkt. no. 1 in 1:07cv55), her amended motion (dkt. no. 103 in 1:05cr102 and dkt. no. 7 in 1:07cv55) and **DISMISSES** the case **WITH PREJUDICE**. The Court orders the Clerk to **STRIKE** the case from the Court's docket.

It is so **ORDERED**.

The Clerk is directed to mail a copy of this Order to the petitioner.

Dated: January 22, 2008.

/s/ Irene M. Keeley

IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE